# UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI Central Division

MELISSA A. MARAS,	)
Plaintiff,	)
	)
<b>v.</b>	) Case No. 2:16-cv-04210
	)
THE CURATORS OF THE	)
UNIVERSITY OF MISSOURI, et al.,	)
Defendants.	)

### **DEFENDANTS' MOTION TO STAY**

COME NOW Defendants The Curators of the University of Missouri ("The Curators"), Daniel L. Clay, Keith Herman, Matthew P. Martens, Timothy C. Riley-Tillman, and R. Bowen Loftin, through counsel, and for their Motion to Stay the proceeding of this case, state as follows:

- 1. Plaintiff filed her original Petition for Damages in state court in the Circuit Court of Boone County, Missouri on March 1, 2016, bringing a claim against all of the Defendants for employment discrimination in violation of the Missouri Human Rights Act ("MHRA"), and for breach of the covenant of good faith and fair dealing against The Curators.
- 2. Prior to filing suit, Plaintiff had filed an administrative compliant with the Missouri Commission on Human Rights (the "Commission"), as required by the MHRA.
- 3. Plaintiff had attached to her Petition a copy of her Right to Sue letter she had received from the Commission dated January 28, 2016, which was unlimited on its face. See Exhibit A attached hereto.
- 4. On April 28, 2016, Defendants filed a motion to dismiss all allegations which occurred prior to June 7, 2015, due to the fact that the Commission's investigative summary (included within the Commission's file produced to Defendants upon request) expressed a determination that all of plaintiff's allegations occurring before June 7, 2015 were not timely filed and the Commission therefore lacked jurisdiction over those allegations, and further instructed that all allegations occurring before June 7, 2015 were administratively closed with no notice of right to sue issued. See Exhibit B attached hereto.
- 5. Thereafter, on June 7, 2016, Plaintiff moved to amend her Petition to include a third count against The Curators for employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

- 6. Plaintiff was granted leave, and her First Amended Petition was filed with the state court on June 20, 2016.
- 7. Defendants then initiated the removal of this case to federal court on July 20, 2016, based on federal question jurisdiction given the new claim brought under federal employment law.
- 8. Defendants also sent a letter to the Commission, dated July 25, 2016, requesting that the Commission vacate its closure of the administrative complaint and issue a new right to sue letter that reflected the Commission's true findings, as set forth in the investigative summary.
- 9. The Commission then vacated the closure of the complaint, due to an error, and issued a new right to sue letter dated August 1, 2016, that specifically states that Plaintiff has "NO RIGHT TO SUE on Allegations before June 7, 2015 BECUASE OF LACK OF JURISDICTION" but does have a right to sue on "all allegations after June 7, 2015." See Exhibit C and Exhibit D attached hereto.
- 10. On August 29, 2016, Plaintiff filed a Petition for Declaratory Judgment and Writ of Mandamus against the Executive Director of the Commission in the Circuit Court of Cole County, Missouri, asking that the court declare that the Commission lacked authority to vacate the original right to sue letter and to order the Commission to rescind the latest right to sue letter and affirm the original, unlimited right to sue letter (*Melissa Maras v. Alisa Warren*, Case No. 16AC-CC00364, Circuit Court of Cole County, Missouri).
- 11. The resolution of that tangential case will have a direct impact on what allegations Plaintiff can use to support her claim for violation of the MHRA against the Defendants in this case, including whether plaintiff has a viable claim against any of the individual defendants in this case.
- 12. The parties in this case have conducted their Rule 26 conference and have produced their initial Rule 26 disclosures. No further discovery has been completed at this time.
- 13. It is preferable that the legal issue underlying plaintiff's right to sue under the MHRA, now pending before the Circuit Court of Cole County, be resolved before the parties invest additional time and efforts to conduct further discovery and motions in this case.
- 14. In order to preserve the resources of all involved, and to promote judicial economy, Defendants request that the present proceedings be stayed until resolution of Case No. 16AC-CC00364.

- 15. Granting a stay of the proceedings in this case will not unduly prejudice any of the parties involved.
- 16. Suggestions in Support of this motion are filed and incorporated herein by reference.
  - 17. Defendants wish to also make an oral argument on this motion.

WHEREFORE, Defendants The Curators, Daniel L. Clay, Keith Herman, Matthew P. Martens, Timothy C. Riley-Tillman, and R. Bowen Loftin, pray this Court stay the present proceedings until a judgment has been entered in Case No. 16AC-CC00364, and to award Defendants such other and further relief as the Court deems just and appropriate under the circumstances.

#### SMITH LEWIS, LLP

/s/ Colly J. Durley

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## **Attorneys for Defendants**

#### **Certificate of Service**

I certify that on September 14, 2016, I served this document upon all attorneys of record through the Court's electronic filing system.

/s/ Colly J. Durley
Colly J. Durley